Supreme Court, U.S.
FILED
AUG 23 1999
OFFICE OF THE CLERK

(2)

No. 99-152

IN THE SUPREME COURT OF THE UNITED STATES

EARLENE POLYAK, Petitioner

vs.

THE HONORABLE CHARLES BURSON; FRANK HULEN ESTATE; DORA LEE HULEN; WILMA LESNANSKY; THE HONORABLE JIM HAMILTON, CIRCUIT AND CHANCERY JUDGE; GERALD WILSON, CIRCUIT COURT CLERK; DALTON MOUNGER; AND GENEVA FRISBEE, CLERK & MASTER Respondents

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On Petition for Writ of Certiorari
To the United States Court of Appeals
And the United States District Court
For the Sixth Circuit

RESPONDENTS GERALD WILSON AND GENEVA FRISBEE'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF CASE

Respondents, Gerald Wilson and Geneva Frisbee, aver that Petitioner's Statement of the Case is confusing and contains information that is inaccurate and irrelevant to the Court's decision. The most pertinent facts of the case are as follows: (1) On February 24, 1998, Petitioner's case, pending in Lawrence County Circuit Court, was removed to the federal district court for the Middle District of Tennessee; (2) On March 4, 1999, District Judge, Aleta A. Trauger, adopted Magistrate Haynes' Report and Recommendation and dismissed the case as to all defendants based on the doctrine of res judicata. Petitioner appealed to the Sixth Circuit Court of Appeals which denied her application for review based on a previous Order of that Court which required her show cause in writing before filing in that Court. Buford Evans & Sons v. Polyak, No. 92-5240, 1992 WL 301959, *2 (6th Cir. 1992). In Buford Evans & Sons, the Court of Appeals noted that Petitioner had filed fifty appeals and original actions over the partition and sale of the subject property. 1992 WL 301959 at *2.

ARGUMENT

Petitioner should be denied certiorari because the appeal is frivolous since her original lawsuit was clearly barred by the doctrine of res judicata, and she has failed to establish an appealable issue that meets the guidelines set forth by the Court in Rule 10 of the Rules of the Supreme Court of the United States. Petitioner has not asserted that the decision of the Sixth Circuit Court of Appeals denying appellate review is "in conflict with the decision of another United States court of appeals on the same important matter" or that the Sixth Circuit "decided an important federal question in a way that conflicts with a decision by a state court of last resort." Sup. Ct. R. 10. Further, Petitioner has not shown that the Sixth Circuit has "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of the Court's supervisory power." Id. Finally, she has not demonstrated that the Sixth Circuit has "decided a federal question that has not been, but should be, settled by the Court" or that it has "decided an important federal question in a way that conflicts with relevant decisions of this Court." Id. In fact, Petitioner cites no cases that address the Sixth Circuit's decision to deny appellate review, and in light of Petitioner's history of frivolous and repetitive litigation regarding this subject, the decision of the Court of

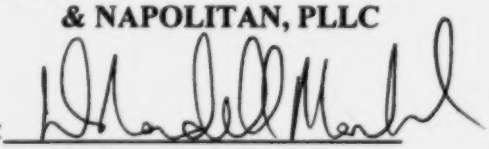
Appeals to deny review certainly does not warrant the exercise of the Court's supervisory review power. Accordingly, the Petition should be denied.

CONCLUSION

For the foregoing reasons the Respondents Gerald Wilson and Geneva Frisbee respectfully request that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

LEITNER, WILLIAMS, DOOLEY & NAPOLITAN, PLLC

By: 

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